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ABSTRACT

This bulletin summarizes provisions of federal law as they pertain to special education and juvenile justice. It discusses provisions of the Individuals with Disabilities Education Act 1997 including: the definition of disability; free appropriate public education; identification, referral, and evaluation; the individualized education program (IEP); special education and related services, due process protections, and the "stay put" rule (that a student should usually stay in his/her current educational placement pending any court proceedings). The bulletin goes on to discuss special education in juvenile delinquency cases specifically, including intake and initial interviews; determination of whether formal juvenile proceedings should go forward; detention; waiver or transfer to adult criminal court; evidentiary issues (insanity, incompetence, intent to commit the offense, and confessions); and disposition. The final section considers youth with disabilities in institutional settings. Topics covered include identification of youth with disabilities in institutional settings, evaluation, interim services and implementation of the IEP, integration with nondisabled students, discriminatory disincentives, due process protections for confined youth, special education in lockdown and other restricted settings, and youth with disabilities convicted in adult criminal court and incarcerated in prison. A list of online resources is attached. (Contains 35 references.) (DB)

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John J. Wilson, Acting Administrator
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JUVENILE JUSTICE BULLETIN

Special Education and the Juvenile Justice System

Sue Burrell and Loren Warboys

A significant proportion of youth in the juvenile justice system have education-related disabilities and are eligible for special education and related services under the Federal Individuals with Disabilities Education Act (IDEA). While 8.6 percent of public school students have been identified as having disabilities that qualify them for special education services (U.S. Department of Education, 1998), youth in the juvenile justice system are much more likely to have both identified and undiscovered disabilities. For example, youth with learning disabilities or an emotional disturbance are arrested at higher rates than their nondisabled peers (Chesapeake Institute, 1994; SRI International, Center for Educational Human Services, 1997), and studies of incarcerated youth reveal that as many as 70 percent suffer from disabling conditions (Leone et al., 1995).

Information about a youth's disability may be relevant at every stage of a juvenile court case. It may help to determine whether formal delinquency proceedings should proceed or suggest important directions for investigation and case strategy. Information about the disability often helps to explain behavior in a way that facilitates constructive intervention, and it is essential to arriving at a disposition that will both meet the youth's rehabilitative needs and comply with IDEA requirements. Helping youth to reach their educational potential by protecting their rights under IDEA can give them the tools they need to succeed in life. In fact, many of the behavioral and educational issues addressed through the special education system closely parallel issues encompassed in the juvenile court disposition process. In ensuring that disability-related needs are identified and met, IDEA may play a significant role in reducing delinquent behavior.

This Bulletin, directed to judges, attorneys and advocates, probation officers, educators, institutional staff, mental health professionals, and service providers, seeks to heighten awareness of special education issues in the juvenile justice system and ensure that youth with disabilities receive the services they need. The Bulletin summarizes pertinent provisions of Federal law related to special education, discusses how the special education process and information about disabilities may be useful in juvenile delinquency proceedings, and examines special education in the context of juvenile and adult institutions.

Federal Laws Related to Special Education

Congress first enacted a comprehensive special education law in 1975: the Education for All Handicapped Children Act

From the Administrator

Large numbers of youth involved with the juvenile justice system have education-related disabilities, and as many as 20 percent of students with emotional disabilities are arrested at least once before they leave school. Information regarding disabilities can assist those providing needed services to youth at every stage of the juvenile justice process and even help to determine whether formal delinquency proceedings should take place.

Special Education and the Juvenile Justice System is intended to inform judges, attorneys, advocates, probation officers, institutional staff, and other youth-serving professionals about the impact of special education issues on juvenile justice matters. The Bulletin summarizes the provisions of the Individuals with Disabilities Education Act and analyzes their relevance to the juvenile justice process—from intake and initial interview to institutional placement and secure confinement.

While special education considerations may impose significant responsibilities on the juvenile justice system, they also serve as a substantial information resource for juvenile justice professionals. This Bulletin increases our understanding of issues surrounding special education, helping equip those who work with juveniles to meet the special needs of all youth.

John J. Wilson
Acting Administrator

Twenty percent of students with emotional disturbances are arrested at least once before they leave school, as compared with 6 percent of all students (Chesapeake Institute, 1994). By the time youth with emotional disturbances have been out of school for 3 to 5 years, 58 percent have been arrested. Similarly, by the time youth with learning disabilities have been out of school for 3 to 5 years, 31 percent have been arrested (SRI International, Center for Education and Human Services, 1997).

(EHA).[1] Since then, Congress has amended the law a number of times and renamed it the Individuals with Disabilities Education Act (IDEA). The first broad revision of the law occurred in 1997, with amendments that significantly changed a number of key special education provisions.[2] Proposed implementing regulations for the 1997 IDEA amendments were widely debated. Final regulations were published March 12, 1999, and took effect May 11, 1999.[3]

As a condition of receiving Federal funds under IDEA, States must demonstrate to the U.S. Secretary of Education that they have policies and procedures in effect that fulfill specific requirements of the law.[4] Local education agencies (LEA's) must have policies, procedures, and programs consistent with State policies and procedures that demonstrate eligibility.[5] The Federal program is administered by the Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

Two other Federal statutes provide additional protection for youth with disabilities: the Rehabilitation Act of 1973[6] and the Americans With Disabilities Act.[7] Although both Acts have a broader purview, they are often invoked to ensure fair treatment for youth with educational disabilities. Both provide for the filing of administrative complaints with the Office of Civil Rights, U.S. Department of Education, which has the authority to investigate and order compliance.

In addition, all States have enacted laws and regulations reflecting IDEA requirements. Some of these, however, are being revised to reflect the 1997 IDEA amendments and the implementing regulations. These laws are often found in State education codes and regulations. Although most State special education laws closely track IDEA, some use different terminology for IDEA concepts. For example, California uses "individual with exceptional needs"[8] to refer to "a child with a disability," as defined by IDEA, and "designated instruction and services" to refer to "related services," as defined by IDEA.[9] While a State may grant protections beyond those required by IDEA, States may not provide fewer rights than would be afforded under Federal law.

Definition of Disability

To be eligible under IDEA, a youth must have one or more of the disabilities listed in the statute and implementing final regulations and, because of that disability, require special education and related services. The range of qualifying disabilities is broad, including:[10]

- Mental retardation.
- Deaf-blindness.
- Deafness.
- Hearing impairment.
- Speech or language impairment.
- Visual impairment.
- Emotional disturbance.
- Orthopedic impairment.
- Autism.
- Traumatic brain injury.
- Other health impairment.
- Specific learning disability.
- Multiple disabilities.

Disabilities that are frequently encountered among delinquents include emotional disturbance, specific learning disability, mental retardation,[11] other health impairment, and speech or language impairment.

The two most common disabilities found in the juvenile justice system are specific learning disability and emotional disturbance. Specific learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations."[12] It may include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia but not a learning problem that is primarily the result of environmental, cultural, or economic disadvantage.[13] Emotional disturbance is defined as:

> (i) [A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
>
> (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
>
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
>
> (C) Inappropriate types of behavior or feelings under normal circumstances.
>
> (D) A general pervasive mood of unhappiness or depression.
>
> (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
>
> (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.[14]

Additional IDEA definitions of disability terms can be found in 34 C.F.R. § 300.7(c).

Free Appropriate Public Education

Every youth with a disability, as defined by IDEA, is entitled to free appropriate public education (FAPE). This entitlement exists for all eligible children and youth, including those involved in the juvenile justice system,[15] ". . . between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school."[16]

IDEA also requires that, "to the maximum extent appropriate,"[17] youth with disabilities, including those in public and private institutions or other care facilities, are educated with youth who are not disabled. Placement in special classes, separate schooling, or other removal from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. This provision is often referred to as the requirement for education in the "least restrictive environment."

Identification, Referral, and Evaluation

IDEA requires school districts and other public agencies to seek out all youth who

may have a disability. States and LEA's must identify, locate, and evaluate all youth with disabilities and implement a system to determine which ones are currently receiving special education and related services. This is often called the child find obligation.[18] In conjunction with these requirements, States typically have statutes, regulations, policies, and procedures designating who may refer youth for evaluation and the process that must be followed.

To determine eligibility for special education and related services, States must notify parents, obtain parental consent to evaluation, use a variety of assessment tools—administered by knowledgeable personnel—appropriate to the youth's cultural and linguistic background, and provide for reevaluation.[19] State policies and procedures typically set time limits for each step in the notice, consent, and evaluation/reevaluation process. Reevaluation must occur at least once every 3 years, but a child's parents and teachers may request it at any time.[20]

The Individualized Education Program

Under the 1997 IDEA amendments, an LEA is required to have an individualized education program (IEP) in effect at the beginning of each school year for each youth with a disability in its jurisdiction.[21] Federal regulations call for no more than 30 days to pass between the determination that a child needs special education and related services and the conduct of the meeting[22] to develop an IEP for the child. A team that includes the following people develops the IEP:[23]

- The child's parents.[24]
- At least one regular education teacher of the child (if the youth is or may be participating in a regular education environment).
- At least one special education teacher of the child or, if appropriate, at least one special education provider of the child.
- A qualified representative of the LEA.
- An individual who can interpret the institutional implications of evaluation results.
- Others (at the discretion of the parents or the agency) who have knowledge or special expertise regarding the youth, including related service personnel as appropriate. This category also could, at the discretion of the parents or the agency, include persons such as probation officers, institutional staff, or other service providers with knowledge or special expertise regarding the youth.
- The child with a disability (if appropriate).

In developing the IEP, the IEP team considers, among other factors, the youth's present levels of educational performance, his or her special education needs, the services to be delivered, objectives to be met, timelines for completion, and assessment of progress. IDEA requires each IEP to include the following basic elements:[25]

- A statement of the child's present levels of educational performance, including:
  - How the child's disability affects his or her involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children).
  - For preschool children, if appropriate, how the disability affects the child's participation in appropriate activities.
- A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
  - Meeting the child's needs that result from his or her disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities.
  - Meeting each of the child's other educational needs that result from his or her disability.
- A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to:
  - Advance appropriately toward attaining the annual goals.
  - Be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities.
  - Be educated and participate with other children with disabilities and nondisabled children in the activities described above.
- An explanation of the extent, if any, to which the child will not participate with nondisabled youth in the regular class and in extracurricular and other nonacademic activities.
- A statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in the assessment. If the IEP team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the child and how the child will be assessed is needed.
- A projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of these services and modifications.
- A statement of how the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of their child's progress—at least as often as parents are informed of their nondisabled

children's progress—toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

IDEA also requires IEP's to include:

- A statement of transition service needs of the student that focuses on the student's courses of study (e.g., advanced placement courses, vocational education) if the youth involved is 14 years old (or younger if determined appropriate by the IEP team). The statement must be updated annually.
- A statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages for transition services if the youth involved is 16 years old (or younger if determined appropriate by the IEP team).

The requirement that transition services be provided to assist youth in moving from school to postschool activities has particular significance for youth in the juvenile justice system. These services include postsecondary education, vocational training, employment (including supported employment), continuing and adult education, specific adult services, independent living, and community participation.[26] For example, the IEP may call for the student to receive specific assistance in applying for admission to a local community college or enrollment in an automobile mechanics program. When the purpose of the meeting will

be consideration of the student's transition service needs or needed transition services, or both, the youth with a disability of any age must be invited to the IEP meeting. Finally, the 1997 IDEA amendments require the IEP team to consider special factors in developing the IEP. Accordingly, the amendments direct the IEP to:

> (i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
>
> (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
>
> (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
>
> (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
>
> (v) Consider whether the child requires assistive technology devices and services.[27]

IEP's must be implemented as soon as possible after the IEP meeting and must be reviewed by the IEP team at least once per year and revised as needed to address any lack of expected progress, results of reevaluation, information provided by the parents, the youth's anticipated needs, or other matters.[28] By statute, most States set specific timelines for each stage in the referral, evaluation, and IEP development process.

Special Education and Related Services

Under IDEA, special education means ". . . specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. . . ."[29] It includes "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education. . . ."[30] IDEA also requires that related services be provided to help youth with disabilities benefit from special education services. These services include ". . . transportation, and such developmental, corrective, and other supportive services as are required to assist the child with a disability to benefit from special education . . . (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only)." The term also includes social work services in schools and parent counseling and training.[31]

Due Process Protections

Parents are involved to the maximum extent possible. They are provided with a full range of procedural safeguards, including the right to examine records, receive written notice of proposed actions (or refusal to take requested actions), and participate in meetings relating to the identification, evaluation, and educational placement of their child and the provision of FAPE to the child. Federal law also requires States to provide an opportunity for parents to initiate due process proceedings and the mediation of disputes with respect to identification, evaluation, and educational placement of their child and the provision of FAPE to the child.[32]

When a parent (as defined in 34 C.F.R. § 300.20) cannot be identified, the whereabouts of the parent cannot be discovered after reasonable efforts, or the student is a ward of the State (as defined by State law), IDEA provides for the assignment of a surrogate parent to protect the educational rights of the child. The surrogate parent may not be an employee of the LEA, State educational agency (SEA), or other agency involved in the education or care of the child (with the exception of nonpublic

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agency employees providing noneducational care for the child who meet the other requirements); must have no interest that conflicts with the interest of the child he or she represents; and must have knowledge and skills that ensure adequate representation of the child.[33]

States may provide for the transfer of parental rights to a student with a disability when the student reaches the age of majority as defined by State law (except if the student has been determined incompetent under State law). Such provisions must ensure that the individual student and the parents receive any required notice under the regulations, that all other rights accorded to the parents under IDEA transfer to the student, that all rights accorded to the parents under IDEA transfer to students incarcerated in adult or juvenile State or local institutions, and that the parents and individual student shall be notified of whatever rights are transferred pursuant to such provisions. There is also a special rule for States that have a mechanism to determine that a student with a disability who has reached the age of majority does not have the capacity to provide informed consent to his or her educational program (even though there has been no determination of incompetence). Such States must provide procedures for appointing the parent or, if the parent is not available, another individual to represent the student's educational interests throughout the period of IDEA eligibility.[34]

Under IDEA, States and LEA's must establish a mediation procedure to resolve disputes and make it available whenever a due process hearing is requested. Mediation must be voluntary, scheduled in a timely manner, held in a place convenient to the parties to the dispute, and conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediation must not be used to deny or delay the parents' right to pursue their complaints through the due process hearing procedures or to deny any other rights afforded under part B of IDEA. Any agreement reached through mediation must be put in writing.[35]

Parents may pursue complaints through a due process hearing conducted by the State or, in some States, the LEA.[36] States are required to develop model forms to assist parents in filing due process requests. Each party (e.g., the parents, the educational agency) must disclose any evaluations and recommendations the party intends to use at least 5 business days prior to the hearing. The hearing officer must not be employed by the State agency or the LEA that is involved in the education or care of the child. At the hearing, the parents may be accompanied by and advised by an attorney and by other persons with special knowledge of or training about the problems of youth with disabilities. Parents have the right to present evidence; prohibit the introduction of any evidence not disclosed 5 business days before the hearing; confront, cross-examine, and compel the attendance of witnesses; obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and obtain written or, at the option of the parents, electronic findings of fact and decision.[37]

If the due process hearing is conducted by an LEA, any party aggrieved by the findings and decision in the hearing may appeal the decision to the SEA.[38] Any party who does not have a right of appeal from a due process hearing to the SEA, or who wishes to appeal an SEA ruling, may file a civil action in the appropriate State court or Federal district court.[39] Reasonable attorneys' fees may be awarded by the court at its discretion to the parents of a child with a disability who is the prevailing party in any action or proceeding brought under section 615 of the Act. IDEA also provides for the award of attorneys' fees in connection with IEP meetings convened as the result of administrative proceedings, judicial action, or, at the discretion of the State, precomplaint mediation. However, it prohibits the awarding of attorneys' fees following the rejection of a settlement offer, unless the parents were substantially justified in rejecting the offer.[40]

In addition to the remedies offered through due process hearings or civil actions in relation to individual cases, States must have a complaint procedure in place for alleged IDEA violations. Possible outcomes of these procedures include monetary reimbursement or other corrective action appropriate to the needs of the child and appropriate provision of future services. Any organization or individual may use the State complaint process, and complaints must be resolved within 60 days after a complaint is filed.[41]

Special Education Timeline[1]

Referral/request for evaluation:	Public agency must ensure that within a reasonable amount of time following parental consent to evaluation, the child is evaluated, and if the child is determined eligible, special education and related services are provided (34 C.F.R. § 300.343(b)(1)).
Development of IEP:	Meeting to develop IEP must be held within 30 days of a determination that a child needs special education services (34 C.F.R. § 300.343(b)(2)).
Implementation of IEP:	Must occur "as soon as possible" following the IEP meeting (34 C.F.R. § 300.343(b)(ii)), and at the beginning of every school year, the LEA must have in effect an IEP for each child with a disability (20 U.S.C. § 1414(d)(2)(a)).
Review of IEP's:	Periodically and at least annually, the IEP team must review IEP's and revise as appropriate (20 U.S.C. § 1414(d)(A); 34 C.F.R. § 300.343(c)).
Reevaluation:	At least once every 3 years or when the child's parent or teacher requests it (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536(b)).

[1] States have many more specific time limits and requirements in their statutes and regulations than this sample timeline provides.

The "Stay Put" Rule

As a general matter, Federal law requires that, absent some agreement to the contrary, the youth shall remain in his or her current education placement pending the completion of any due process proceedings, court proceedings, or appeals.[42] In *Honig* v. *Doe*,[43] the U.S. Supreme Court interpreted this provision to mean that school officials may not unilaterally exclude youth with disabilities from their educational placement. Except as provided in 34 C.F.R. § 300.526, such youth must be allowed to "stay put" in existing

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educational placements during the pendency of any administrative or judicial proceeding. Prominent in the Court's reasoning was that Congress enacted the Federal law after finding that school systems across the country had excluded one of every eight youth with disabilities from classes. Congress intended to strip schools of the unilateral authority they had traditionally employed to exclude students with disabilities, particularly students with emotional disturbances.[31]

Since the enactment of IDEA in 1975 (then EHA), there has been considerable discussion of the stay put requirement. Some people have argued that the schools' options were too limited and cumbersome when there was a legitimate need to remove a dangerous or extremely disruptive youth. The 1997 IDEA amendments attempt to strike a balance between the need to provide a safe, orderly environment and the need to protect youth with disabilities from unwarranted exclusion through disciplinary proceedings. The amendments include limited exceptions for misconduct involving weapons, illegal drugs, or situations in which the youth or others are in danger of injury.

Under the 1997 IDEA amendments, school personnel may suspend youth with disabilities for up to 10 school days or less at a time for separate incidents of misconduct to the extent such action would be applied to youth without disabilities. If, for example, a student without a disability would be suspended from class for 3 days for particular misbehavior, the same sanction could be imposed on a student with a disability for the same kind of behavior. School personnel may also remove such youth to an interim alternative educational setting for up to 45 days if they possess or carry weapons to school or school functions, knowingly possess or use illegal drugs, or sell or solicit the sale of controlled substances while at school or school functions.[32] IDEA specifically defines controlled substances, illegal drugs, and weapons.[33]

The 1997 amendments also permit a hearing officer to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that the public agency has demonstrated by substantial evidence that maintaining the current placement "is substantially likely to result in injury to the child or to others." Before making such an order, the hearing officer must consider whether the current placement is appropriate and whether the public agency has made reasonable efforts to minimize the risk of harm in the current placement (e.g., with supplementary aids and services). The officer should determine that the interim alternative educational setting would enable the youth to continue to progress in the general curriculum and continue to receive those services and modifications that will enable the child to meet the goals called for in the IEP.[47] In addition, services and modifications to attend to the child's behavior and prevent the behavior from recurring must be addressed.

Disciplinary removal for more than 10 consecutive school days (or a series of removals adding up to more than 10 days and constituting a pattern of removal) constitutes a change of placement, which triggers a number of procedural safeguards.[34] For example, the LEA must review the youth's behavioral intervention plan and modify it as necessary to address the behavior not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change in placement. If the LEA did not previously conduct a functional behavioral assessment and implement a behavioral intervention plan, it must convene an IEP meeting to develop a plan to address the behavior.[35] Moreover, the public agency must provide services to the extent required under section 300.121(d).[36]

If it is contemplated that a youth with a disability will be removed from school for more than 10 school days, the IEP team must immediately (or within 10 school days of the decision to take disciplinary action) review the relationship between the child's disability and the behavior subject to disciplinary action. In making this "manifestation determination,"—a requirement under the 1997 amendments—the team and other qualified personnel consider all relevant information including evaluation and diagnostic results and other relevant information from the parents and observations of the youth. The team also considers whether the IEP and placement were appropriate, whether services were being provided consistent with the IEP, whether the disability impaired the youth's ability to understand the consequences of the behavior subject to discipline, and whether the disability impaired the youth's ability to control the behavior.[37]

If it is determined that the behavior was not a manifestation of the youth's disability, the disciplinary procedures applicable to youth without disabilities may be applied.[38] If the behavior was a manifestation of the youth's disability, the LEA should immediately remedy any deficiencies in the IEP or its implementation[39] and observe the 10-day or 45-day limits and other protections on placing the youth in an interim alternative educational setting. Again, even if the behavior was not a manifestation of the youth's disability, the LEA must continue to provide educational services to the extent required under section 300.121(d).[40]

Parents have the right to an expedited appeal of the manifestation determination and the placement. While proceedings challenging the interim alternative placement or manifestation determination (in the case of drugs, weapons, and hearing officer placement) are pending, the youth must remain in the interim alternative placement until the pertinent time period expires unless the parents and public agency agree otherwise. However, if the school proposes to change the youth's placement after this time period, the youth has the right to return to the original placement unless a hearing officer has extended his or her placement. The only exception is that, if school personnel maintain that it is dangerous for the youth to be in the current placement, the LEA may request an expedited hearing to determine whether he or she should be placed in the alternative educational setting or other appropriate placement during the due process proceedings.[41]

The stay put rule also protects the rights of some youth who have not officially been determined eligible for special education and who have engaged in behavior subjecting them to disciplinary removal. Under the 1997 IDEA amendments, such youth are entitled to the stay put rule and other disciplinary due process protections if the LEA had "knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred."[42] The agency is deemed to have that knowledge if the parents have expressed concern in writing to agency personnel that the youth is in need of special education; his or her behavior or performance demonstrates the need for such services; the parents have requested an evaluation of special education eligibility; or the teacher or other LEA personnel, in accordance with the agency's established child find or special education referral system, have expressed concern to the director of special education of the agency or other personnel about the youth's behavior or performance.[43]

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Special Education in Juvenile Delinquency Cases

IDEA's comprehensive system of identification, evaluation, service delivery, and review has special relevance for juvenile justice professionals. The purpose of the special education system, like the juvenile justice system, is to provide individualized services designed to meet the needs of a particular youth. The enhanced behavioral intervention and transition service needs requirements in the 1997 IDEA amendments bring special education goals even closer to those of the juvenile court. Moreover, the careful documentation of service needs and ongoing assessment of progress required by IDEA bring valuable informational resources to juvenile justice professionals.

This section presents a brief overview of how special education information may be helpful as cases make their way through juvenile court. Some of the issues discussed, such as insanity or incompetence, arise only occasionally. Others, such as the impact on disposition of whether a child has a disability, are relevant in every case in which a delinquent youth is eligible for special education services.

Intake and Initial Interviews

The short timeframe for juvenile court proceedings leaves little room for missed opportunities. Juvenile justice professionals must be alert from the earliest moment for clues to the youth's special education status or existing unidentified disabilities. This process, which should become part of the standard operating procedure, includes carefully interviewing the youth and his or her parents, routinely gathering educational records, procuring examinations by educational and mental health experts, investigating educational services at potential placement facilities, and coordinating juvenile court proceedings with the youth's IEP team. Under the 1997 IDEA amendments, whenever a school reports a crime allegedly committed by a youth with a disability, school officials must provide copies of the youth's special education and disciplinary records to the appropriate authorities to whom the school reports the crime, but only to the extent that the Family Educational Rights and Privacy Act (FERPA) permits the transmission. FERPA allows school officials to transmit school records to law enforcement officials only if parents consent in writing to the transmission and in certain other narrowly tailored situations (see 34 C.F.R. § 99.30). This requirement should help ensure that, at least in appropriate school-related cases, special education history, assessments, and service information are readily available early in the court process.[58]

Juvenile justice professionals can learn to recognize disabilities by carefully reading the legal definitions of disability. It is important to understand that youth may have a variety of impairments that are not immediately apparent. Numerous checklists and screening instruments are available to help recognize signs of disabilities and to determine eligibility for special education services (National Council of Juvenile and Family Court Judges, 1991).

If circumstances suggest the need for an eligibility evaluation, modification of a previously existing IEP, or some other exercise of the youth's rights under special education law, juvenile justice professionals should ensure that appropriate action is expeditiously taken. They should request that parents give written consent for the release of records and should submit a written request for information, evaluation, or review to the LEA.

Juvenile justice professionals could start by contacting the LEA to obtain its policies and procedures for providing special education services to youth in the juvenile justice system. Some districts have designated an individual to deal with compliance issues, and that person may be helpful in expediting or forwarding requests to the right person or agency. Most jurisdictions have a number of other groups that can provide advocacy or other assistance in navigating the special education system. Protection and advocacy offices, special education advocacy groups, learning disabilities associations, and other groups providing support or advocacy for particular disabilities may greatly assist juvenile justice professionals.

Determination of Whether Formal Juvenile Proceedings Should Go Forward

Nothing in IDEA prohibits an agency from "reporting a crime committed by a child with a disability to appropriate authorities" or prevents law enforcement and judicial authorities from "exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability."[59] These provisions, outlined in the 1997 amendments, were made in response to concerns that IDEA's procedural protections could be interpreted to preclude juvenile court jurisdiction over school-related crimes committed by youth with disabilities. In the past, at least one court ruled under State law that a school could not initiate a juvenile court prosecution as a means of evading the procedural requirements of IDEA.[60] Other courts found the juvenile court lacked jurisdiction in cases involving noncriminal school-related misconduct in which special education procedures had not been followed.[61]

In at least one case decided after the 1997 amendments, the court confirmed that IDEA does not prevent juvenile courts from exercising jurisdiction over students with disabilities, even if the school is attempting to evade its special education responsibilities. Nonetheless, intake officers and prosecutors should scrutinize whether such evasion has occurred in determining whether a particular case belongs in the juvenile justice system and how it should be processed.[62] Courts and hearing officers have stressed that the school's responsibility to comply with IDEA procedural requirements does not end when a youth with a disability enters the juvenile justice system.[63]

Even if courts have the power to act, that does not mean the power should be exercised in every case. Long before the 1997 IDEA amendments, a number of courts found that the best course was to dismiss the juvenile court case or defer it until special education proceedings stemming from the misbehavior could be completed.[64]

Many juvenile justice professionals have encountered cases in which a youth enters the juvenile justice system for a relatively minor offense and his or her stay escalates into long-term incarceration because of the youth's inability to succeed in programs developed for low-risk delinquent youth. This may happen either because the disability-related behavior makes it difficult for the youth to understand or comply with program demands or because his or her behavior is misinterpreted as showing a poor attitude, lack of remorse, or disrespect for authority.

If the juvenile court petition involves a youth with an identified or suspected disability, juvenile justice professionals should first consider whether school-based special education proceedings could provide services or other interventions that would obviate the need for juvenile court proceedings. This is particularly true for incidents occurring at school. The 1997

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IDEA amendments require thorough scrutiny of behavioral needs and implementation of appropriate interventions that may far exceed what most juvenile courts are able to provide. In appropriate cases, the juvenile court may wish to consider:

- Continuing or deferring the formal prosecution pending the outcome of special education due process and disciplinary proceedings that may alleviate the need for juvenile court intervention.
- Placing first-time offenders and/or youth alleged to have committed offenses that are not considered too serious for informal handling into diversion or informal supervision programs. Through such programs, the court imposes specific conditions on the youth's behavior, such as regular school attendance, participation in counseling, observation of specified curfews, or involvement in community service programs. If the youth successfully complies with these conditions, the case is dismissed at the end of a specified period—usually 6 months to 1 year. Allowing the youth to remain in the community, subject to such conditions, may facilitate the completion of special education proceedings while ensuring heightened supervision of the youth. Through IEP development or modification, the youth might be determined eligible for services that supplant the need for formal juvenile court proceedings.
- Dismissing the case in the interest of justice. This option should be considered in cases in which the disability is so severe that it may be difficult or impossible for the youth to comply with court orders. This may occur, for example, if the offense is relatively minor; the youth suffers from mental illness, emotional disturbance, or mental retardation; and/or services are forthcoming through the special education system.

Detention

Youth taken into secure custody at the time of arrest are entitled to judicial review of the detention decision within a statutory time period. Depending on the jurisdiction and characteristics of the case, the length of detention may range from several hours to several months. Many professionals view the detention decision as the most significant point in a case. Detention subjects the youth to potential physical and emotional harm. It also restricts the youth's ability to assist in his or her defense and to demonstrate an ability to act appropriately in the community.

Unfortunately, youth with disabilities are detained disproportionately (Leone et al., 1995). Experts posit that one reason for this is that many youth with disabilities lack the communication and social skills to make a good presentation to arresting officers or intake probation officers. Behavior interpreted as hostile, impulsive, unconcerned, or otherwise inappropriate may be a reflection of the youth's disability. This is another reason why it is important to establish the existence of special education needs or suspected disabilities early in the proceedings. Juvenile justice professionals must be sensitive to the impact of disabilities on case presentation at this initial stage and work to dispel inaccurate first impressions at the detention hearing.

In some cases, it may be appropriate for the court to order the youth's release to avoid disrupting special education services. This is particularly true if adjustments in supervision (e.g., modification of the IEP or behavioral intervention plans) may reduce the likelihood of further misbehavior pending the jurisdictional hearing. Similarly, if there are early indications that a special education evaluation is needed, it may be important for the youth to remain in the community to facilitate the evaluation. Many jurisdictions have home detention programs that facilitate this type of release by imposing curfews or other restrictions on liberty that allow the youth to live at home and attend school pending the outcome of the delinquency proceedings.

Waiver or Transfer to Adult Criminal Court

Every jurisdiction has a mechanism by which some juveniles may be tried in the criminal justice system. Juveniles waived or transferred to the criminal justice system are treated like adults and may receive any sentence that could be imposed on an adult criminal (with the exception, in some States, of the death penalty). Although some jurisdictions have automatic filing rules (statutory transfer) for particular offenses and others provide for prosecutorial direct file (concurrent jurisdiction), many have waiver provisions that involve the exercise of judicial discretion. In judicial waiver jurisdictions, the judge must consider whether the youth is amenable to treatment and rehabilitation in the juvenile justice system.

When making this determination, the existence of specific learning disabilities, mental retardation, serious emotional disturbance, traumatic brain injury, developmental disabilities, or other disabilities qualifying the youth for special education services should be taken into account (Barnum and Keilitz, 1992; Woolard et al., 1992). For example, it may be significant for the court to know that the youth has a previously undiagnosed learning disability that could be addressed through special education and related services available in the State's juvenile training school or other State facilities for secure confinement of serious juvenile offenders. Information about particular disabilities (e.g., mental retardation) may also help to dispel inaccurate images of the youth in relation to waiver criteria such as criminal sophistication or mitigate his or her role in the alleged offense.

The court should also be informed of the status of previous juvenile court orders or service mandates through the special education system for mental health, education, or other services (Beyer, 1997). If these services were not implemented, it would be unjust to place the mantle of rehabilitative failure on the youth. In such cases, the juvenile court should retain jurisdiction to ensure that appropriate special education and other services are provided.

Evidentiary Issues

The record documenting the extent and nature of any disability—and its impact on the youth's thinking and acting—may play a critical role in helping to determine the existence of important evidentiary issues:

- **Insanity.** Occasionally, mental illness or mental status may affect functioning so drastically that the youth may be legally insane under State law. Records of special education evaluation and services in connection with emotional disturbance, traumatic brain injury, or other disabilities may be helpful in evaluating sanity.
- **Incompetence.** A youth may be declared incompetent for adjudication if the court finds that he or she is unable to understand the nature of juvenile court proceedings or is unable to assist the defense attorney.[5] Information about the impact of the youth's disability (e.g., a low level of intellectual functioning, problems in communicating, emotional disturbance, perceptual difficulties, and deficits in memory) may have a bearing on the court's finding (Grisso, 1997; Grisso, Miller, and Sales, 1987).
- **Intent to commit the offense (*mens rea*).** As in criminal cases, delinquency

allegations may be sustained only if each element of the offense is proved beyond a reasonable doubt.[55] One of the required elements is the intent to commit the particular offense. Evidence of a disability, particularly one involving limited mental functioning, may suggest the need to evaluate this issue and may sometimes be relevant and admissible on the issue of intent.

- **Confessions.** The admissibility of confessions in State court may be challenged on the grounds that the youth did not make a valid waiver of rights under *Miranda* v. *Arizona*[56] or the confession was not made voluntarily. In determining the validity of *Miranda* waivers, courts consider all of the circumstances, including the youth's age, experience, education, background, and intelligence, and his or her capacity to understand the nature of the warnings, the meaning of the right to counsel and privilege against self-incrimination, and the consequences of waiving those rights.[57] Whether the confession was made voluntarily is also measured against all of the circumstances surrounding the interrogation, with the focus on circumstances showing coercion.[58] Many of the criteria governing admissibility of confessions involve areas that may be affected by any number of disabilities.

Thus, a youth with mental retardation who is unable to explain to counsel what happened in relation to the alleged offense may have grounds to claim incompetence. A youth whose learning disability relates to comprehension of written materials may have grounds to challenge a claimed waiver of *Miranda* rights if the waiver was based on written forms. A youth who is mentally ill or emotionally disturbed may have grounds to claim that his or her statement was not voluntary (Greenburg, 1991; Grisso, 1980; Shepherd and Zaremba, 1995). Records of a youth's special education history may be useful to advocates in deciding whether to seek the advice of experts on the impact of the disability on such issues. The records may also help show past impairment with respect to particular issues (Bogin and Goodman, 1986).

Disposition

Education may be the single most important service the juvenile justice system can offer young offenders in its efforts to rehabilitate them and equip them for success. School success alone may not stop delinquency, but without it, troubled youth have a much harder time (Beyer, Opalack, and Puritz, 1988). When special education needs are evident, they should be an essential part of the social study report prepared by the probation department to guide the court in making its disposition order. Moreover, juvenile justice professionals should coordinate disposition planning with education professionals to avoid conflict and to take advantage of the rich evaluation resources and services available through IDEA.

The resulting disposition order should reflect the court's review of special education evaluations and the goals, objectives, and services to be provided under the IEP. If the youth is to be placed out of the home, the court should demand specific assurance that the facility will meet the youth's educational needs under IDEA. The juvenile court should also use its disposition powers to ensure special education evaluation and placement for previously unidentified youth who show indications of having a disability.

In deciding whether or where to place a youth with a disability, it is also important for the court to understand the impact of the disability on behavior. Youth with attention deficit disorder (ADD), for example, commonly act impulsively, fail to anticipate consequences, engage in dangerous activities, have difficulty with delayed gratification, have a low frustration threshold, and have difficulty listening to or following instructions. They may begin to associate with delinquents or self-medicate through drugs and alcohol because they are rejected by others. Proper medication has a dramatic effect in helping many of these youth control their behavior, and a variety of professionals are skilled in treating ADD in medical, psychiatric, or educational settings (Logan, 1992). Unless the characteristics of ADD and the existence of effective interventions are recognized, youth with this disability stand a good chance of being treated harshly, often through incarceration, based on the outward manifestations of their disability. Juvenile justice professionals should respond appropriately to evidence of such disabilities by ensuring that appropriate medical, mental health, and other services are provided.

Juvenile justice professionals also must learn to recognize potential problems for youth with certain disabilities in particular settings, so as not to set the youth up for failure. This does not mean that juvenile justice professionals need to become diagnosticians or clinicians. However, they should consult with education, mental health, and medical professionals. It is important to seek professional advice about the kinds of settings in which the youth can function best and the kinds of settings most likely to lead to negative behavior. For example, a youth with an emotional disturbance may not be able to function in the large dormitory setting typical of some institutions. Such youth may feel especially vulnerable because of past physical or sexual abuse or may simply suffer from overstimulation in an open setting. They may require a setting in which external stimuli are reduced to the greatest extent possible and intensive one-on-one supervision is provided. Youth with other disabilities may need programs that minimize isolation and emphasize participation in group activities.

Postdisposition monitoring. Juvenile justice professionals should ensure that youth with disabilities receive the services ordered at disposition. Cases should be reviewed to determine whether different or additional services are needed and whether the placement continues to be appropriate. As part of this monitoring, juvenile justice professionals should ensure that special education rights under IDEA are being protected. When modification of the disposition plan is needed, they should coordinate its development with the youth's IEP team. When it appears

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that the youth's special education needs are not being met in the current placement, the court should order appropriate changes or, if necessary, terminate juvenile court jurisdiction.

Youth With Disabilities in Institutional Settings

Nationally, youth and adults confined in institutions have an astonishingly low level of functioning with respect to basic skills needed for living in the community:

> About one third of prisoners are unable to perform such simple job-related tasks as locating an intersection on a street map, or identifying and entering basic information on an application. Another one-third are unable to perform slightly more difficult tasks such as writing an explanation of a billing error or entering information on an automobile maintenance form. Only about one in twenty can do things such as use a schedule to determine which bus to take. Young prisoners with disabilities are among the least likely to have the skills they need to hold a job. For them, education is probably the only opportunity they have to become productive members of society.[70]

Institutional education has a clear, positive effect in reducing recidivism and increasing postrelease success in employment and other life endeavors. For youth with disabilities, special education and related services provided through institutional schools are critically important to that success.

The provisions of IDEA cover all State and local juvenile and adult criminal corrections facilities.[71] The only exclusion from the entitlement to a FAPE applies (to the extent that State law does not require special education and related services under part B to be provided to students with disabilities) to any youth ages 18 through 21 who, in his or her last educational placement prior to incarceration in an adult criminal corrections facility, was not actually identified as a child with a disability and did not have an IEP under part B.[72]

A facility failing to comply with IDEA may be challenged through administrative proceedings, individual lawsuits, or class-action civil-rights litigation. Over the years, court and administrative decisions have applied IDEA's protections to youth in juvenile detention centers and training schools and those in jails and prisons (Youth Law Center, 1999). Dozens of decisions, rulings, and consent decrees address a range of issues, including identification of youth with disabilities, access to educational records, evaluation, IEP development, service delivery, staff qualifications, and timelines for compliance with required components in the special education program (Puritz and Scali, 1998; Youth Law Center, 1999). Additional decisions address remedies such as compensatory education for failure to provide special education services to youth in institutions.[73]

Providing special educational services to youth in custody presents many challenges. Factors to be dealt with include length of stay, the facility's physical layout, and the need for heightened security. This section discusses a number of issues that often arise.

Identification of Youth With Disabilities in Institutional Settings

IDEA's child find obligation requires that all youth with disabilities be identified, located, and evaluated and that a practical method be implemented to determine whether eligible youth are receiving needed special education and related services. One way to meet this obligation is to have an efficient system in place to determine whether the youth has been previously identified as eligible. Routine screening when the youth is admitted to or enters the school program could reveal information about previous placements, special classes, and other indicators that the youth was in special education. Because it is important to obtain prior school records promptly, it may be helpful to identify a contact person at the LEA who can verify special education records. As noted previously, the 1997 IDEA amendments require LEA's to forward special education and disciplinary records.[74]

Facilities also must find youth with disabilities who have not been identified previously as eligible for special education. Intake staff, probation officers, and regular education staff should be trained to recognize students who may have disabilities and take immediate steps to initiate referral for evaluation. Because the evaluation process calls for parental consent, the referral is best initiated by parents. LEAs should assist parents in making written requests. However, nothing in Federal law prevents other individuals or agencies from making the initial request for evaluation of IDEA eligibility. Educators, probation officers, or attorneys should consider making the formal request if parents are unavailable or unwilling.

This identification process must occur even in facilities such as detention centers, in which the typical length of stay may be only a few days or weeks. In reality, some youth in short-term facilities spend much longer periods in custody (e.g., awaiting placement or trial in adult criminal court), and many will return to the facility in connection with probation violations or future cases. In addition, useful information gathered at one facility may be shared with subsequent placements.

Evaluation

Facilities and agencies that have custody of a youth for only a short time are not exempt from the mandate to begin the evaluation process, even though the complete evaluation may take several weeks. If a youth is moved before the evaluation is complete, the school should forward the information to the student's next educational placement.

A common problem, particularly for short-term facilities, is that the education program may have insufficient staffing or staff without the requisite qualifications to conduct eligibility evaluations.[75] In such cases, the facility should make arrangements through the LEA serving its youth to ensure that full evaluations by qualified personnel are provided. The facility also must ensure that requests for reevaluation by parents and teachers are honored.[76]

Interim Services and Implementation of the IEP

When a facility confines a youth who has an IEP, it must implement the existing IEP or hold a new IEP meeting in accordance with Federal law,[77] just as a school district would have to implement the IEP of a special education student transferring from another district. If the IEP team elects to modify the IEP, it must provide interim services comparable to those called for in the existing IEP until the new IEP is developed. Federal law requires IEP's to be implemented as soon as possible after initial IEP or revision meetings.[78] Many States have set time limits on the maximum duration of interim services.[79]

In some cases, juvenile facilities confine youth who have had IEP's in the past but who have no current IEP or who were not in school immediately prior to incarceration.

Federal law does not specifically address the length of time after which IEP's are no longer required to be implemented. However, the existence of a previous IEP is strong evidence that the youth has a disability and is eligible for services. In practice, officials should implement the previous IEP unless they can document persuasive reasons for not doing so.[80] If the IEP is no longer appropriate, a new program should be developed as soon as possible.[81]

Several of the IEP requirements called for in the 1997 IDEA amendments have particular significance for youth in institutional settings. The requirements for positive behavioral interventions may overlap with institutional case plans. Accordingly, educational staff should coordinate goals and objectives with institutional staff to ensure consistent practice and enable institutional staff to recognize and deal effectively with disability-related behavior.

The inclusion of transition service needs in IEP's beginning at least by age 14 (or younger if determined appropriate) should be closely coordinated with institutional planning for parole or release of juvenile offenders. When appropriate, planned services should include assistance in obtaining full-time employment or enrolling in college (Leone, Rutherford, and Nelson, 1991). As part of transition planning, it is advisable to establish contact with local community programs. Local school districts often are reluctant to take students back after out-of-district placements, so early contact is critical for effective post-release programs. At least one court has confirmed that institutions must ensure that students' special education needs can be met and that current IEP's are implemented as soon as possible in their next placement.[82]

In addition, the 1997 IDEA amendments provide that youth with disabilities are entitled to extended school year services if the child's IEP team determines they are needed to ensure FAPE. The youth's IEP team determines whether extended school year services are needed on an individual basis.[83] Extended school year services may be an important right for youth with disabilities who are incarcerated during the summer.

Integration With Nondisabled Students

The Federal requirement that special education students be educated, to the extent appropriate, with students who are not disabled applies in the juvenile institutional context.[84] Institutions may not provide a generic special education program and force all youth with disabilities to attend. Students may be placed in special education classes only as specifically called for in each IEP.[85] As in the outside community, youth must be served with nondisabled students to the maximum extent appropriate.

Discriminatory Disincentives

Facilities must not allow discriminatory disincentives to participation in special education services.[86] Special education programs should not interfere with programs in which youth with disabilities may otherwise participate, including extracurricular activities. Detention staff, for example, may not require youth to choose between special education services and other desirable programs, such as vocational classes. Similarly, a disability may not preclude a student's placement in a less secure facility, such as a camp, or keep the student from being granted a furlough.

Due Process Protections for Confined Youth

The due process protections embodied in special education law are particularly important for youth in institutional care. At the time of confinement, youth should receive a handbook that sets forth their rights and affirms that officials will not discriminate on the basis of disability.[87] Facilities should also inform youth and their parents (or surrogate parents) of their rights under IDEA. Documentation of all actions taken to provide special education to an individual student is essential.

The due process protections outlined in special education law must remain distinct from any institutional grievance procedure. It is impermissible for officials to require students or parents to fulfill steps not called for by IDEA in order to challenge school officials' decisions. In meeting the due process requirements, facilities must be careful to meet mandated timelines because delays may undermine the purpose for which the timelines were established. Especially in short-term placements, officials should establish expedited procedures to quickly resolve challenges to agency decisions by the youth or parent.

Officials must include parents in the IEP process consistent with IDEA. Unless a court expressly limits their rights, parents of youth in institutional settings have all the rights that are accorded to parents of youth who are not in out-of-home placements.[88] For some placements, especially prisons, distance is the biggest obstacle to parental involvement. Distance must not prevent a parent from participation. If a youth is placed far from his or her parents' residence, teleconferencing may be essential. The burden is on the facility to keep all parties—especially parents—involved in the IEP process.

In some cases, surrogate parents could be appointed as an important part of a youth's due process protection. Surrogate parents have all the rights regarding education that the parents have. In institutional settings, as in the community, the surrogate parent must be independent and have no conflict of interest. For example, in a juvenile detention center, the surrogate parent may not be a probation department employee.[89]

Special Education in Lockdown and Other Restricted Settings

When youth with disabilities are removed to lockdown units or other restricted settings, facilities must still provide special education services required by the IEP. While the 1997 IDEA amendments provide for modification of IEP's of students with disabilities incarcerated in adult criminal corrections facilities if there is a "bona fide security or compelling penological interest,"[90] no such exception exists for juvenile facilities. Accordingly, the normal rules for implementing and modifying IEP's would seem to apply. If misbehavior is school related, placement in lockdown or other restricted settings where youth with disabilities are unable to attend the regular institutional school may constitute a change of placement. A change of placement triggers additional disciplinary procedural safeguards, including review of behavioral intervention plans, functional behavioral assessments, manifestation determinations, and time limits on exclusion. As in noninstitutional settings, students and parents have the right to challenge changes in placement or modifications to their IEP's.

The practical difficulties in providing services to youth in lockdown and restricted settings should prompt institutional and educational administrators to work to reduce the length of time spent in such settings. To reduce the need for lockdown, institutional educators also should pay close attention to behavior intervention strategies when developing the initial IEP. Finally, staff development should include

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Online Resources

A wealth of information about IDEA, research on disabilities, methods of providing special education and related services, organizations that focus on particular disabilities, and special education in the juvenile justice system is available on the Internet. These are just a few of the many Web sites for practitioners interested in special education and juvenile justice issues.

Bazelon Center for Mental Health Law

Washington, DC
www.bazelon.org

Bazelon presents a number of online informational publications, legal briefs and analyses, and advocacy primers relating to youth with disabilities, with an emphasis on mental disabilities.

Coordinating Council on Juvenile Justice and Delinquency Prevention

Washington, DC
www.childrenwithdisabilities.ncjrs.org

As part of its effort to promote a national agenda for children and foster positive youth development, the Coordinating Council has created the Children With Disabilities Web site. The site offers families, service providers, and others information about advocacy, education, employment, health, housing, recreation, technical assistance, and transportation covering a broad array of developmental, physical, and emotional disabilities, including learning disabilities.

Learning Disabilities Association (LDA)

Pittsburgh, PA
www.ldnatl.org

This national nonprofit organization has chapters in 50 States. Its Web site offers families and professionals information on advocacy, research, legal developments, and access to local LDA chapters. LDA has a broad range of fact sheets, news alerts, and other publications on specific learning disabilities, legal issues, and advocacy for youth with disabilities.

National Association of Protection and Advocacy Systems, Inc.

Washington, DC
www.protectionandadvocacy.com

This national association of protection and advocacy and client assistance programs serves people with disabilities. The Web site contains publications and fact sheets on disability-related legal issues, legal alerts, an extensive list of organizations focusing on disabilities, and information about how to access protection and advocacy services.

The National Center on Education, Disability, and Juvenile Justice

College Park, MD
www.edjj.org

This newly created center is jointly funded by the Office of Special Education Programs, U.S. Department of Education and the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The National Center on Education, Disability, and Juvenile Justice (EDJJ) was created to develop more effective responses to the needs of youth with disabilities in the juvenile justice system or those at risk for involvement in the juvenile justice system. EDJJ's home is at the University of Maryland, with partners at Arizona State University, University of Kentucky, American Institutes for Research, and the Pacer Center. EDJJ's Web site offers training and materials, publications, parent support, links to other resources, and conferences and forums. Particular areas of focus include prevention, education programs, transition and aftercare, and policy studies.

National Information Center for Children and Youth With Disabilities (NICHCY)

Washington, DC
www.nichcy.org

This is a national information and referral center for families, educators, and advocates on specific disabilities, special education and related services, educational rights, and referral organizations that can help with information, advocacy, and support. NICHCY publishes fact sheets on disabilities and legal issues, news digests, guides for parents and students, IDEA training materials, and publications on educational rights.

Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice

Washington, DC
www.ojjdp.ncjrs.org

This Web site offers a wide range of information on juvenile justice issues, including publications, resources, grants and funding, and ways to contact the agency with particular questions or research needs. It includes many education-related resources. For example, the Web site's search function yields close to 150 documents on special education.

Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education

Washington, DC
www.ed.gov/offices/OSERS/OSEP/index

This Web site gives practitioners access to the 1997 IDEA regulations, annual reports to Congress, links to OSEP-sponsored Web sites of other organizations, research on youth with disabilities, and materials on implementation of the 1997 IDEA.

training institutional staff on IDEA mandates and on problems youth with disabilities may experience in institutional settings.

In many ways, behavior intervention prescribed through IDEA's mandates overlaps with the mission of the greater juvenile institution to intervene in and prevent inappropriate behavior. Institutional staff and educators should work together to meet the behavioral needs of incarcerated youth with disabilities.

Youth With Disabilities Convicted in Adult Criminal Court and Incarcerated in Prison

Most youth with disabilities under the age of 22 incarcerated in adult criminal corrections facilities are covered under IDEA's provisions. The only group excluded from entitlement to FAPE comprises inmates ages 18 through 21 (to the extent that State law does not require that special education and related services under part B be provided to students with disabilities) who, in the last educational placement prior to their incarceration in adult criminal corrections facilities, were not identified as having disabilities and did not have IEP's.[91] The 1997 IDEA amendments also provide that youth convicted as if they were adults under State law and incarcerated in prison are not entitled to participation in State and districtwide assessments, the benefit of requirements related to transition planning, or transition services if their eligibility for services will end, because of their age, before they are eligible to be released from prison based on consideration of their sentence and eligibility for early release.[92] As noted previously, the 1997 IDEA amendments permit the IEP team to modify the IEP of an inmate convicted in adult criminal court under State law and incarcerated in a prison if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.[93] Other than these limitations, all IDEA protections apply to eligible youth in prisons.

Conclusion

Although the special education system imposes significant duties on the juvenile justice system, it offers substantial resources to professionals working throughout that system. Its emphasis on identifying behavior related to disabilities and developing practical ways to address that behavior offers a constructive, positive approach to serving the needs of the many delinquent youth who have disabilities. Ensuring that special education needs are met at every point in the juvenile justice process will inevitably support and enhance the success of delinquency intervention.

Endnotes

1. Pub. L. No. 94–142 (1975).

2. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, revised and amended by Pub. L. No. 105–17, 111 Stat. 37 (1997). Some of the 1997 amendments became effective on their passage; others took effect in 1998.

3. 34 C.F.R. § 300.1 *et seq.* (1999). The U.S. Department of Education issued a notice clarifying that compliance with new provisions in the regulations was not required for fiscal year 1998 but was required for fiscal year 1999 and carryover funds from fiscal year 1998.

4. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.110, §§ 300.121–300.156.

5. 20 U.S.C. § 1413(a); 34 C.F.R. § 300.220, §§ 300.121–300.156.

6. 29 U.S.C. § 794 (1973).

7. 42 U.S.C. § 12101 *et seq.* (1990); *see also Pennsylvania* v. *Yeskey*, 118 S. Ct. 1952 (1998) (holding that the Americans with Disabilities Act extends to prison inmates).

8. California Education Code § 56026.

9. California Education Code § 56363.

10. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(a)(1).

11. Children with ADD or ADHD may be eligible for services under the category of "other health impairment," 34 C.F.R. § 300.7 (c)(9)(i) or through section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

12. 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.7(c)(10)(i).

13. 20 U.S.C. § 1401(26)(B) and (C); 34 C.F.R. § 300.7(c)(10)(i) and (ii).

14. 34 C.F.R. § 300.7(c)(4).

15. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.2(b)(iv). The 1997 IDEA amendments permit States to exclude youth ages 18 through 21 who, in the educational placement prior to their incarceration in an adult criminal corrections facility, were not actually identified as being a youth with a disability *or* did not have an IEP. 20 U.S.C. § 1412(a)(1)(B)(ii). Note that the implementing regulation permits exclusion of this group for those who, in the last educational placement prior to incarceration in an adult criminal corrections facility, were not actually identified as being a youth with a disability *and* did not have an IEP. 34 C.F.R. § 300.311(a).

16. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.121(a). However, the general age eligibility provisions do not apply to youth ages 18 through 21 if State law or practice, or the order of any court, does not provide for public education to youth in that age range. 20 U.S.C. § 1412(a)(1)(B)(i); 34 C.F.R. § 300.122(a)(1).

17. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550.

18. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.125.

19. 20 U.S.C. § 1414(a)–(c); 34 C.F.R. §§ 300.532–500.543.

20. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536.

21. 20 U.S.C. § 1414(d)(2)(A), 34 C.F.R. § 300.342(a).

22. 34 C.F.R. § 300.343(b)(2).

23. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.344(a).

24. The importance of parental participation is underscored in detailed notice, scheduling, and documentation of efforts requirements. 34 C.F.R. § 300.345.

25. 20 U.S.C. § 1414(d)(1)(A)(vii); 34 C.F.R. § 300.347(b).

26. 20 U.S.C. § 1401(30); 34 C.F.R. § 300.29.

27. 20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.346(a)(2).

28. 34 C.F.R. § 300.342(b)(ii), § 300.343(c).

29. 20 U.S.C. § 1401(25); 34 C.F.R. § 300.26 (a)(1).

30. 20 U.S.C. § 1401(25)(A)–(B); 34 C.F.R. § 300.24(a)(1)(i)–(ii).

31. 20 U.S.C. § 1401(22); 34 C.F.R. § 300.24.

32. 20 U.S.C. § 1415(b); 34 C.F.R. §§ 300.501–300.512.

33. 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.515.

34. 20 U.S.C. § 1415(m); 34 C.F.R. § 300.517; *see also Paul Y.* v. *Singletary*, 979 F. Supp. 1422 (S.D. Fla. 1997).

35. 20 U.S.C. § 1415(e); 34 C.F.R. § 300.506.

36. 20 U.S.C. § 1415(f); 34 C.F.R. § 300.507.

37. 20 U.S.C. § 1415(h); 34 C.F.R. § 300.509.

38. 20 U.S.C. § 1415(g); 34 C.F.R. § 300.510.

39. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.512.

40. 20 U.S.C. § 1415(i)(3); 34 C.F.R. § 300.513.

41. 34 C.F.R. §§ 300.660–300.662. Apart from the State complaint process pursuant to IDEA, complaints may be filed with the Office of Civil Rights, U.S. Department of Education, for discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or title II of the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*).

42. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.514.

43. 484 U.S. 305 (1988).

44. 484 U.S. at 323–324.

45. 20 U.S.C. § 1415(k)(1)(A); 34 C.F.R. § 300.520(a).

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46. 20 U.S.C. § 1415(k)(10); 34 C.F.R. § 300.520(d).

47. 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.521.

48. 34 C.F.R. § 300.519; *see generally* 20 U.S.C. § 1415(k)(1)(a).

49. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.520(b).

50. 20 U.S.C. § 1412(a)(1)(A), § 1415(k)(3); 34 C.F.R. § 300.121(d), § 300.522.

51. 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.523.

52. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.524.

53. 34 C.F.R. § 300.523(f).

54. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.121(d).

55. 20 U.S.C. § 1415(k)(2), § 1415(k)(7); 34 C.F.R. § 300.525, § 300.526, § 300.528.

56. 20 U.S.C. § 1415(k)(8)(A); 34 C.F.R. § 300.527(a).

57. 20 U.S.C. § 1415(k)(8)(B); 34 C.F.R. § 300.527(b).

58. 20 U.S.C. § 1415(k)(9)(B); 34 C.F.R. § 300.529(a); *see also* Northside Independent School District (No. 106–SE–1297), 28 Individuals With Disabilities Education Law Report (IDELR) 1118 (State Education Agency Texas 1998); *Smith* v. *Wheaton* (No. H–87–190 (TPS)), 29 IDELR 200 (D. Conn. 1998); Cabot School District (No. H–99–02), 29 IDELR 300 (Ark. 1998).

59. 20 U.S.C. § 1415(k)(9); 34 C.F.R. § 300.529(a).

60. *Morgan* v. *Chris L.*, 25 IDELR 227 (6th Cir. 1996) (unpublished decision).

61. *See, e.g., Flint Board of Education* v. *Williams*, 276 N.W.2d 499 (Mich. App. 1979) (violation of school rules and regulations); *In re McCann*, 17 Educ. for the Handicapped L. Rep. [now the IDELR] 551 (Tenn. Ct. App. 1990) (truancy and unruly behavior).

62. *State of Wisconsin* v. *Trent N.*, 26 IDELR 434 (Wis. Ct. App. 1997); Cabot School District (No. H–99–02), 29 IDELR 300 (Ark. 1998).

63. Cabot School District (No. H–99–02), 29 IDELR 300 (Ark. 1998); *State of Connecticut* v. *David F.*, 29 IDELR 376 (Conn. Super. Ct. 1998).

64. *In the Matter of Shelly M.*, 453 N.Y.S.2d 352 (1982); *In re Ruffel*, 18 IDELR 1171 (N.Y. Fam. Ct. 1992).

65. *See Dusky* v. *United States*, 362 U.S. 402 (1960); *Drope* v. *Missouri*, 420 U.S. 162 (1975); *see, e.g., In re Patrick H.*, 63 Cal. Rptr. 2d 455 (Cal. Ct. App. 1997).

66. *In re Winship*, 397 U.S. 358, 368 (1970).

67. 384 U.S. 436 (1966). *Miranda* warnings must precede any custodial interrogation. Note that the U.S. Supreme Court will decide in *Dickerson* v. *United States*, 120 S. Ct. 578 (mem.) (No. 99–5525) (*review granted*, Dec. 6, 1999), Fourth Circuit, U.S. Court of Appeals, No. 97–4750, 166 F.3d 667, whether *Miranda* has been overruled in *Federal* cases by a statute (18 U.S.C. § 3501) that purports to restore voluntariness as the test for admissibility.

68. *See Fare* v. *Michael C.*, 442 U.S. 707, 725 (1979).

69. *See Haley* v. *Ohio*, 332 U.S. 596, 599 (1948); *Reck* v. *Pate*, 367 U.S. 433, 442 (1961); *see, e.g., In re J.J.C.*, 689 N.E.2d 1172 (Ill. App. Ct. 1998), suppressing as involuntary the confession of a youth with a history of mental problems and learning disabilities.

70. Letter to Mr. George M. Galarza, Warden of California State Prison-Corcoran; 30 IDELR 50 (U.S. Department of Education, Office of Special Education Programs, 1997).

71. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.2(b)(iv).

72. 20 U.S.C. § 1412(a)(1)(B)(ii); 34 C.F.R. § 300.122(a)(2).

73. *See, e.g., State of Connecticut-Unified School District No. 1* v. *State Department of Education*, 27 IDELR 3 (Conn. Super. Ct. 1997).

74. 20 U.S.C. § 1415(k)(9)(B); 34 C.F.R. § 300.529(b)(2).

75. 20 U.S.C. § 1414(b); 34 C.F.R. § 300.532.

76. 20 U.S.C. § 1414(c); 34 C.F.R. § 300.536.

77. 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.346(b); *Alexander S.* v. *Boyd*, 876 F. Supp. 773, 802 (D.S.C. 1995), *affd. in part and rev'd. in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. (1998).

78. 34 C.F.R. § 300.342(b)(ii).

79. *See, e.g.*, CALIF. EDUC. CODE § 56325 (West 1998), requiring immediate provision of an interim placement implementing the existing IEP to the extent possible within existing resources, with review by the IEP team within 30 days.

80. *See, e.g.*, Boyd, 876 F. Supp. at 802.

81. 34 C.F.R. § 300.342(b)(ii). Different rules apply to some juveniles in adult criminal corrections facilities. *See* 34 C.F.R. § 300.122 (a)(2) concerning individuals ages 18 through 21 convicted as adults under State law and housed in adult criminal corrections facilities.

82. *Smith* v. *Wheaton* (No. H–87–190 (TPS)), 29 IDELR 200 (D. Conn. 1998).

83. 34 C.F.R. § 300.309.

84. 20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.550.

85. OCR Region IX, No. 09–91–1343–I (1992) (unreported).

86. 29 U.S.C. § 794.

87. OCR Region IX, No. 09–91–1343–I (1992) (unreported) (OCR found discrimination against students with hearing impairments in violation of section 504 in part because the student handbook lacked such a statement).

88. *See, e.g., Maine Department of Education*, 17 IDELR 211 (State Education Agency, Maine, 1990), *but see* 34 C.F.R. § 300.122(a)(2) regarding individuals ages 18 through 21 convicted as adults under State law and residing in adult criminal corrections facilities.

89. 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.515(c)(2), *but see* 34 C.F.R. § 300.517(a)(2) if State transfers rights at the age of majority for all students.

90. 20 U.S.C. § 1414(d)(6)(B); 34 C.F.R. § 300.311(c).

91. 20 U.S.C. § 1412(a)(1)(B)(ii); 34 C.F.R. § 300.311(a).

92. 20 U.S.C. § 1414(d)(6)(A)(ii); 34 C.F.R. § 300.311(b)(2).

93. 20 U.S.C. § 1414(d)(6)(B); 34 C.F.R. § 300.311(c); *see, e.g., New Hampshire Department of Education* v. *City of Manchester, N.H. School District*, 23 IDELR 1057 (D.N.H. 1996).

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Acknowledgments

This Bulletin is dedicated to the memory of Loren Warboys, who passed away in December 1999 after an extended struggle with leukemia. Early in his career, Loren recognized the need for advocacy on behalf of youth with disabilities in the juvenile justice system, and he worked for the next two decades to protect their legal rights. As one of only a handful of nationally recognized legal experts in this field, Loren was constantly involved in policy discussions over legislation and regulations. He was counsel in a number of groundbreaking cases on behalf of youth with disabilities in institutions and wrote many articles and training manuals on the interplay between juvenile justice and special education. He also spent countless hours consulting on these issues with families, educators, public officials, and juvenile justice professionals. Loren's unflagging compassion and commitment have had a lasting effect in making the juvenile justice system more attuned and better equipped to meet the needs of youth with disabilities.

Sue Burrell is a staff attorney and Loren Warboys was the managing director of Youth Law Center, a San Francisco-based private, nonprofit law firm specializing in protecting the rights of youth in juvenile justice and child welfare systems throughout the Nation. The authors were guided in the preparation of this Bulletin by the many ideas and experiences offered to them over the years by youth with disabilities in the juvenile court process and juvenile institutions. The hope that these youth may enjoy a bright future and reach their greatest potential has truly inspired this work.

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